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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,132	01/18/2001	Thaddeus I. Kingsford	58091-A CCD	7826

7590 03/20/2003

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EXAMINER

COMSTOCK, DAVID C

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 03/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/765,132

Applicant(s)

KINGSFORD ET AL.

Examiner

David C. Comstock

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 18-21, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 6-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 9, 10, 18-21, 29 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 4 and 6-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and subspecies, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 9, 10, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Holloway (4,777,969).

Holloway discloses a compact comprising a manipulable applicator unit 42 including an applicator 46 and a material container unit 12, a receptacle 22 for a coherent body of material, and a cover 10. A well 24 opens through the proximal end of the unit. The applicator is removably inserted into the well. The receptacle has an open side, disposed distally of the well and opening laterally of the unit. The cover is manually movable relative to the receptacle. The container unit includes a housing member with a lateral opening to the receptacle. The housing member is hollow and the receptacle is disposed therewithin. The housing member is manually rotatable via a grasping portion 20. (See Fig. 1 and col. 2, lines 3-12.)

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Claims 1-3, 19, 29, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Aversa (3,397,707).

Aversa discloses a compact comprising a manipulable applicator unit 14 including a brush applicator 23 and a material container unit 8, a receptacle 10 for a lip colorant, and a cover 7. A well 13 opens through the proximal end of the unit. The applicator is removably inserted into the well. The receptacle has an open side, disposed distally of the well and opening laterally of the unit. The cover is manually movable relative to the receptacle. The applicator has a manually graspable handle 15 that projects outwardly of the well. The container unit comprises a housing member for the receptacle. A pan 11 is removably seated in the receptacle. A coherent body of lip colorant is disposed in the pan. (See Figs. 3 and 8; col. 1, lines 20-21; and col. 2, lines 12-14.)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aversa (3,397,707).

Aversa discloses the claimed invention except for the cover being formed of transparent material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the cover of transparent material, since it

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has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aversa (3,397,707) in view of Giese et al. (5,655,553).

Aversa discloses the claimed invention except for the aperture in the receptacle. Giese et al. disclose a cosmetics compact 10 having apertures 52 in the receptacle 50 to allow pressure to be applied to the bottom of the pan through the holes in the receptacle to allow the pans to be removed without complication and to improve the convenience of the device (see Fig. 2; col. 1, lines 9-13 and 45-49; and col. 2, lines 1-5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the compact of Aversa with an aperture in the receptacle, in view of Giese et al., in order to allow pressure to be applied to the bottom of the pan through the hole in the receptacle to allow the pan to be removed without complication and to improve the convenience of the device.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aversa (3,397,707) in view of Ebbetts, III et al. (5,437,294).

Aversa discloses the claimed invention except for the pan being divided into a plurality of laterally opening compartments. Ebbetts, III et al. disclose a compact 10 having a pan divided into a plurality of laterally opening compartments 18 to allow cosmetics of different colors to be housed therein and improve the versatility of the device (see Fig. 3 and col. 4, lines 20-27). It would have been obvious to one having

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ordinary skill in the art at the time the invention was made to provide the compact of Aversa with a pan divided into a plurality of laterally opening compartments, in view of Ebbetts, III et al., in order to allow cosmetics of different colors to be housed therein and improve the versatility of the device.

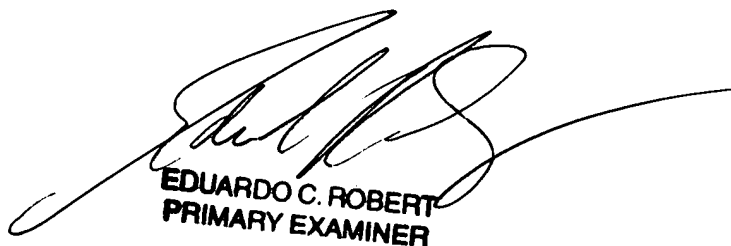
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Comstock whose telephone number is (703) 308-8514.



D.C. Comstock
March 18, 2003



EDUARDO C. ROBERT
PRIMARY EXAMINER